IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR.

D.B. CIVIL WRIT PETITION NO.3762/1998

Ramesh Khatnani son of late Shri Daulate Ram Khatnanai, By Caste Sindhi, Resident of 665 A/1, Anand Nagar, Ajmer

.....Petitioner

Versus

1. Union of India through Collector (Customs), Jaipur
2. Customs, Excise & Gold (Control) Appellate Tribunal, Northern Bench, West Block No.2, R.K. Puram, New Delhi through its Registrar
3. The Commissioner, Customs & Central Excise, New Revenue Building, Statue Circle, Jaipur
4. Shri Harsh Bahadur, Superintendent, Udaipur Customs Range, Udaipur

.....Respondents

Date of Order:- July 9th , 2007.

PRESENT
HON'BLE MR.JUSTICE R.M. LODHA
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Rajendra Prasad for petitioner.
Mr. Tej Prakash Sharma for respondents.

****

Judgment(**Per Mohammad Rafiq, J.**)-

Under challenge in this writ petition are seizure memo dated 18/12/1993, confiscation order

passed in relation thereto by the Commissioner Customs & Central Excise, Jaipur dated 27/30.10.1995 and the order of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (in short, “Tribunal”) dated 26/12/1997 whereby the said Tribunal while dismissing the appeal of the petitioner upheld the aforementioned order of the Commissioner.

2. Factual matrix of the case is that the Customs officials of Udaipur and Jodhpur range jointly conducted search of the shop and residential premises of the petitioner and prepared a Panchnama/Seizure Memo and seized eight foreign marked gold biscuits, 1067 US Dollars, 15 Singapore Dollars and Indian Currency worth Rs.11,10,000/-. Statement of the petitioner under Section 108 of the Customs Act 1962 (for short, “Act”) was recorded on 19/12/1993. A show cause notice dated 3/6/1994 was issued to the petitioner as to why (a) eight gold

biscuits under Section 111(b), (b) foreign currency notes under Section 111(d), (c) Indian Currency notes and (d) other material be not confiscated under Section 119(1) of the Act and penalty should not be imposed on him in respect of each of the above three under Section 112(b) of the Act. The petitioner submitted reply to the show cause notice on 3/2/1995. Commissioner, Central Excise & Customs, Jaipur upon consideration of the entire material on record and explanation putforth by the petitioner, passed the final adjudication order on 27/30.10.1995 thereby confiscating the aforesaid articles and imposing Rs.20,000/- as penalty upon the petitioner and one Ashok Suri. Feeling aggrieved thereby, the petitioner preferred an appeal before the Tribunal which vide its order dated 13/1/1998 while upholding the order-in-original passed by the Commissioner dismissed the appeal. Hence, the writ petition.

3. We have heard Mr. Rajendra Prasad, learned counsel for the petitioner and Mr. Tej Prakash Sharma, learned counsel for the respondents.

4. Mr. Rajendra Prasad, learned counsel for the petitioner argued that the Commissioner gravely erred in passing the order of confiscation inasmuch as, the said order is not based on any reliable evidence or any cogent material. Recovery of eight gold biscuits having foreign marks as such does not conclusively prove that they were brought in India without paying the requisite custom duty. Seizure by itself does not substitute the proof of the fact that such biscuits were smuggled. Mr. Rajendra Prasad argued that under Section 105 of the Act the power to search can be exercised only if a duly empowered officer of the customs had the reason to believe that any goods liable to confiscation are secreted in a place. In that event, he may authorise any officer of customs to search or may himself

search such place. It was argued that the said power can be exercised by an officer of the rank of Assistant Collector. The Superintendent of Customs who actually conducted the search had no authority to do so inasmuch as the notification dated 31/1/1970 referred to in the impugned order by the Tribunal did not confer any such power on respondent No.4. The authorities had no reason to believe in the meaning of Section 123 of the Act that seized articles were smuggled goods. Unless the authorities proves so by cogent evidence, no presumption under Section 123 of the Act could be drawn. No information was actually received nor any such information was brought on record either to substantiate the fact.

5. Mr. Rajendra Prasad further argued that the customs authorities had acted in a most arbitrary manner in that the petitioner was made to sign the statement recorded u/s.108 of the Act under fear of

physical pain. Such statement recorded on 19/12/1993 was retracted by the petitioner on the very next day on 20/12/1993. Confession in the statement about seized articles being related to smuggling was wrongly attributed to the petitioner. Statement of the petitioner was recorded while he was in custody of the respondents and such statement being in the nature of confession, could not be relied and acted upon as against the petitioner. The statement having been recorded under the fear of physical pain was not a voluntary statement and, therefore, being hit by Section 24 of the Evidence Act, 1872 was inadmissible in evidence.

6. It was argued that the petitioner apart from running the STD, was dealing in the exchange of mutilated currency notes and it was in connection of his this business that the Indian currency notes were found in his premises. Indian currency was not a notified item under sub-Section (2) of Section 123

of the Act and therefore no presumption under Section 123 of the Act for that article could arise. The petitioner produced ledger and cash book in which cash was duly accounted for and it was also shown in the return of the relevant period filed before the authorities of Income-tax Department. Authorities below have erred in drawing presumption in an arbitrary manner that the Indian currency was the sale proceeds of the smuggled gold biscuits and such inference was wholly unfounded and baseless.

7. As regards the Gold biscuits of foreign marking, it was submitted that the authorities below have arbitrarily disbelieved the explanation offered by the petitioner in a most perfunctory manner. Eight gold biscuits which were seized from his premises were of M/s.Ashish Jewellers and the petitioner would have only earned Rs.100/- per biscuit as profit for getting the work of Kundan done on them. These gold biscuits were delivered to

the petitioner by Mr. Ashok Suri of M/s.Ashish Jewellers who had received such gold biscuits from K.N. Babu from Dubai against a valid baggage receipt which was produced. Entry to this effect was made in the stock register of M/s.Ashish Jewellers which document was also produced.

8. As regards 1067 US Dollars and 15 Singapore Dollars, it was argued that they belonged to one Shankardas Vadhwani. His affidavit to this effect was filed before the Commissioner. It was explained by the petitioner to the custom authorities that the said Mr. Shankardas Vadhwani was an N.R.I. who originally belonged to Ajmer and on his return from Dubai, he had entrusted those U.S. Dollars for their safe custody to the petitioner.

9. It was therefore submitted that the writ petition may be allowed in terms of the prayers aforesaid.

10. Per-contra, Mr. Tej Prakash Sharma, learned counsel appearing for the respondents while opposing the writ petition argued that the business and residential premises of the petitioner were searched on 18/12/1993 on the basis of the prior information which ultimately resulted in seizure of eight gold biscuits of foreign mark, 1067 US Dollars, 15 Singapore Dollars and Indian Currency worth Rs.11,10,000/-. Statement of the petitioner was recorded u/S.108 of the Act on 19/12/1993 in which he voluntarily stated that he was dealing in smuggled gold biscuits having foreign marks and foreign currency. Recovery of foreign mark gold biscuits and foreign currency is further corroborated from the fact that in the year 1995 also one case was lodged against the petitioner for the similar offence and penalty of Rs.2000/- was imposed upon him. In fact, the petitioner in his statement admitted having purchased eight gold

biscuits through a broker, Topiwala of Delhi three days ago payment of which was made in cash and also admitted having had similar transaction with him in the past. If at all there was any shread of truth in what the petitioner alleged in the letter of retraction, nothing prevented him from disclosing this at the time of preparing panchnama on 18/12/1993 itself. The letter of retraction dated 20/12/1993 was in fact anti-dated which is proved from the fact that it was received in the department belatedly on 6/1/1994. The petitioner has also not mentioned anything in his statement about the facts aforesaid regarding Ashok Suri and Shankardas Vadhvani of whose names he sought to introduce subsequently. Allegation contained in the letter of retraction that his statement was recorded under duress coercion and under the fear of physical pain is totally baseless. It was argued that this story has been concocted by the petitioner much subsequently to save himself from the clutches of

law. The papers including panchnama dated 18/12/1993, the aforesaid statement recorded on 19/12/1993 etc. were produced before the Special Magistrate (Economic Offences) Rajasthan, District Judge, before the Sessions Judge and even before this Court when the bail application of the petitioner was considered on different dates and till that time, no such case was set up before any of the court by the petitioner or his advocate on his behalf that the respondents have prepared a false report or a fabricated story. Reference was made to the order of this Court dated 25/1/1994 whereby bail application of the petitioner was rejected by this Court after consideration of the aforesaid statement.

11. Mr. Tej Prakash Sharma further argued that the order-in-original passed by the Commissioner was based on correct appreciation of all the facts and circumstances of the case and consideration of the

material on record including the defence set up by the petitioner. Learned Commissioner has passed the aforesaid order keeping in view the correct position of law and after affording reasonable opportunity of hearing to the petitioner. It was argued that the proper officer of the Custom Department conducted the search prompted by the source information as he had reason to believe that the petitioner had secreted contraband goods liable to confiscation and he, acting on that belief, conducted the search which ultimately led to information being found correct and consequent seizure. Basis of the aforesaid belief was information received but the officer was not required to record such reasons which even otherwise were eventually found substantiated.

12. On the question of competence of the officer to make the search, it was argued that the Superintendent of the Customs was gazetted officer

and according to para 1(a) of Notification No.11-Cus dated 31/1/1970 of the Customs, a gazetted officer of the Central government was authorised under Section 105 of the Act to search the premises under the specified condition. The aforesaid notification was issued by the respondents in exercise of the powers conferred upon them under Section 152 of the Act authorizing the gazetted officers of the Customs Department to make search and therefore no specific authorization by name of individual officer was required. It was argued that even if plea of the petitioner is accepted for the argument sake, though denied, the recovery and seizure of articles and subsequent confiscation cannot be on that basis held to have been vitiated. Reliance in connection was placed on decision of the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Natawarlal Damodardas Soni 1983(13) ELT 1620 (SC).**

13. It was argued that the custom official are not police officials and therefore statement recorded by them under Section 108 of the Act would not be hit by Section 24 of the Evidence Act and would be admissible in evidence. Mr. Ashok Suri for whom petitioner stated that he received the gold biscuits from K.N. Babu under a baggage receipt, in his statement denied having met the aforesaid K.N. Babu and also stated that he did not know him.

14. As regards the foreign currency, it was argued that Section 2(22) of the Act defines the foreign currency as goods attracting Section 110 of the Act. From the evidence of this case, it was proved that foreign currency was being purchased as smuggled goods and its unlawful acquisition was also proved. The petitioner also failed to prove about gold biscuits having foreign marks that the same were not illicitly imported or were possessed by him legally as required by Section 123 of the Act. Apart

from the aforesaid articles, the manner in which 1000 U.S. Dollars were found in the cavity of a wooden chowki, secret jackets having concealed pockets and two paper slips indicating transactions in gold, were recovered and seized in the presence of the petitioner and his brother and independent witnesses with a pointed note in the panchnama, clearly proved those articles to be smuggled once. On being asked, the petitioner could not justify his possession of such seized goods or articles and could not produce any evidence about their genesis. Falsehood of the explanation later given by the petitioner stands proved if what he has stated is considered in the right perspective in that the petitioner sought to develop this story on the basis of the affidavit of Mr.Ashok Suri dated 27/12/1993 that the petitioner went to his shop on 16/12/1993 and received eight gold biscuits and that Mr. Ashok Suri handed over photocopy of the gold voucher dated 16/12/1993 to the petitioner. Had it been true,

there was no reason why the petitioner should not have produced such voucher before the proper officer at the time of search and preparation of the panchnama.

15. Regarding seizure and confiscation of the Indian currency notes it was argued that the said currency was the sale proceeds of smuggled goods therefore they were liable to confiscation under Section 121 of the Act. Since all the articles so recovered were inter-linked therefore confiscation of the Indian currency with other seized goods was justified in law but the petitioner failed to give any satisfactory explanation even regarding recovery of two slips and jackets apart from eight gold biscuits, 1067 U.S. Dollars, 15 Singapore Dollars and Indian currency worth Rs.11,10,000/-.

16. Lastly, Mr. Tej Prakash Sharma, learned counsel for the respondents argued that all those

arguments which the petitioner has made are based on questions of fact and the order-in-original passed by the Commissioner and the order passed by the Tribunal upholding such order while rejecting appeal of the petitioner were based on evidence and material available on record. Neither of these orders suffer from any illegality or perversity and both the orders are therefore perfectly valid. There is therefore no case for interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. The writ petition therefore deserves to be dismissed.

17. We have given our thoughtful consideration to the aforesaid arguments and perused the material on record.

18. Examining first of all the argument of the petitioner that he was made to give statement under Section 108 of the Act under the fear of physical

pain while he was in custody of the respondent and that this is proved from the fact that immediately after the statement was recorded on 19/12/1993, the petitioner on the following day i.e. on 20/12/1993 retracted the said statement, we must begin with noticing that although both sides agree on the fact that the aforesaid statement of the petitioner was recorded on 19/12/1993 and that he was arrested also on 19/12/1993 but no definite pleadings have come from either side as to which of the events preceded the other. This is however not a very significant aspect of the matter because even if it is accepted that the statement of the petitioner was recorded when he was in custody, it would nonetheless be a validly recorded statement under Section 108 of the Act. There is no material on record nor are there any such contemporaneous circumstance to support, let alone substantiate, the allegations of duress and coercion. We have to however examine as to what would be the effect of the letter of retraction

dated 20/12/1993 as to the admissibility or otherwise, of the aforesaid statement and further whether the allegations contained in that letter of retraction inspire so high a confidence that they should be accepted in preference to the statement recorded under Section 108 of the Act. It is not in dispute that the petitioner was in custody on 20/12/1993 when the letter of retraction was allegedly sent. But then, the respondents have denied having received that letter on that day and contend that in fact the said letter was received as late as 6/1/1994. This letter has not been sent through jail authorities. It would thus be evident that the letter was sent by someone else, presumably at the behest of the petitioner. Allegation of duress and all that has been stated in the aforesaid letter of retraction cannot be believed also because no such plea was set up by the petitioner or his advocate when all the papers, including panchnama dated 18/12/1993 and the statement of the petitioner

dated 19/12/1993, were produced before the Special Magistrate (Economic Offences) Rajasthan Jaipur, District Judge and thereafter before this Court on different dates when the bail application of the petitioner was considered and dismissed. In fact, the bail application of the petitioner was rejected by this Court much thereafter on 25/1/1994 on consideration of various aspect of the matter including the statement aforesaid. There is no contemporaneous evidence even otherwise on record that the petitioner was subjected to duress or coercion or was made to give the statement under the fear of physical pain or his wishes. All those explanations and the documents which the petitioner sought to link with recovery, seizure, confiscation of eight gold biscuits, 1067 U.S. Dollars, 15 Singapore Dollars and Indian Currency worth Rs.11,10,000/- were nowhere in picture when the panchnama was prepared on 18/12/1993 in presence of the petitioner, his brother and independent

witnesses. We cannot therefore countenance the argument of the learned counsel for the petitioner as to inadmissibility of the statement recorded under Section 108 of the Act. This statement, even otherwise, cannot be disbelieved on mere ipse-dixit of the petitioner. Considering the plea set up by the petitioner in his letter of retraction and in fact, credibility of the letter of retraction, in the light of all these surrounding circumstances, we reject this argument.

19. It is trite law that a custom officer is not a member of the police force and that he is not entrusted with the duty to maintain law and order. He is invested with the power of collecting customs duty to prevent smuggling and for that purpose to search any person or premises on reasonable suspicion. Mere fact therefore that when statement of the petitioner was recorded he was in custody of the custom officials would not make any difference

and make the statement less acceptable. A person arrested by a Custom Officer in such circumstances when asked to make a statement, is not an accused of an offence within the meaning of Article 20(3) of the Constitution of India because the Custom Officer is not a police officer within the meaning of Section 24 of the Evidence Act. Law is therefore clear on the subject that the statement of a person u/s.108 of the Act in adjudicatory proceedings against him cannot be discarded just because he has later retracted it.

20. Question as to what should be the evidentry value of a retracted statement recorded during confiscation proceedings under Section 108 of the Act, came up for consideration of the Hon'ble Supreme Court in **K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin : (1997) 3 SCC 721.** Their lordships in that case while following the law laid down by the

Constitutional Bench judgment of the Supreme Court in **Ramesh Chandra Mehta Vs. State of West Bengal : AIR 1970 SC 940** reiterated with reference to Section 24 of the Evidence Act that custom officer is not a police officer and so is person whose statement is recorded is not “a person accused of the offence” in the meaning of Section 24 of the Evidence Act till a complaint is filed against him in the court of competent jurisdiction of the Magistrate to take cognizance of the offence and summons are issued. In so far as relevant to the controversy involved in the present case. Their lordships, in para 17(4) and (5) of the report succinctly stated the law on the subject as under :

> “17.xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
> (1)xxxxx
> (2)xxxxx
> (3)xxxxx
>
> (4) Though the Customs Officer is an authority within the meaning of Section 24 of the Evidence Act, by reason of statutory compulsion of recording the statement or the

accused giving voluntary statement pursuant to his appearing either after issuance of summons or after the appellant's surrender, such statement cannot be characterised to have been obtained by threat, inducement or promise.

(5) The collection of evidence under Section 108 and other relevant provisions relating to search and seizure are only for the purpose of taking further steps for confiscation of contraband and imposition of penalty.

(6)xxxxxx
(7)xxxxxx”

Rejecting the argument similar to the one raised in the present case that the statement of the petitioner was recorded under the fear of physical pain, their lordships in para 14 of the report held that “the allegations as to the threat of implication of his wife was an afterthought and he did not mention the same when he appeared before the Magistrate and obtained bail”.

21. Considering the question as to what would be the value of retracted confessional

statement recorded under Section 108 of the Act, their lordships in para 20 of the report in **K.I. Pavunny supra** held as under:-

> “20.xxxxxxxxxxxxxxxxxxxxxxxxxxx
> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
> “if a confession is proved by unimpeachable evidence and if it is of voluntary nature, it when retracted, is entitled to high degree of value as its maker is likely to face the consequences of confession by a statement affecting his life, liberty or property. Burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in *Bhagwan Singh v. State of Punjab (1) (AIR para 30)*. If it is established from the record or circumstances that the confession is shrouded with suspicious features, then it falls in the realm of doubt. The burden of proof on the accused is not as high as on the prosecution. If the accused is able to prove the facts creating reasonable doubt that the confession was not voluntary or it was obtained by threat, coercion or inducement etc., the burden would be on the prosecution to prove that the confession was made by the accused voluntarily. If the court believes that the confession was voluntary and believes it to be true, then there is no legal bar on the court for ordering conviction. However, the rule of prudence and practice does require that the court

> seeks corroboration of the retracted confession from other evidence. The confession must be one inculpating the accused in the crime. It is not necessary that each fact or circumstance contained in the confession is separately or independently corroborated. It is enough if it receives general corroboration. The burden is not as high as in the case of an approver or in accomplice in which case corroboration is required on material particulars of the prosecution case. Each case would, therefore, required to be examined in the light of the facts and circumstances in which the confession came to be made and whether or not it was voluntary and true. These require to be tested in the light of a given set of facts. The high degree of proof and probative value is insisted in capital offences".

22. In view of the aforesaid discussion, we are not inclined to accept the argument of the petitioner that his statement recorded under Section 108 of the Act was not voluntary or was obtained by duress and coercion. Notwithstanding the retraction made by the petitioner at a later point of time, the authorities below, in our view, did not commit any error of law in relying on the same for the purpose

of confiscation of the seized gold biscuits and currency notes, because it received corroboration from very many other factors that were proved by sufficient material on record.

23. Adverting now to the argument that Superintendent of the Customs Udaipur Range was not authorised to make search and seizure inasmuch as no reason existed for his belief as required by Section 105 of the Act that any goods liable to confiscation are secreted in shop or residence of the petitioner, we are not inclined to accept this argument either and we shall presently state the reasons of our holding so. Section 105 of the Act as existed at the relevant time inter-alia provided that if the Assistant Commissioner of Customs or Deputy Commissioner of Customs, or in any area adjoining the land frontier of the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any

goods liable to confiscation are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things. It would be evident from the scheme of the Act that the Assistant Collector or even any other officer empowered in this behalf by the Board, having reason to believe that any goods liable to confiscation are secreted in a place, could either himself search or even authorise any other officer of customs to do so. It would thus be seen that the policy of the legislature is not so rigid as to empower only Assistant Collector of Customs to search. The Board may specially authorise an officer who in turn could further authorise any other officer to conduct the requisite search. In other words, the officer with delegated powers has been permitted to further delegate the powers so as to effectuate the object of the enactment and ensure its effective implementation. The respondents have in this respect made a specific reference to the

notification of the Government dated 30/1/1970 specially its para 1(a) according to which a Gazetted Officer of Customs and Central Excise has been authorised under Section 105 of the Act to search the premises and it has not been disputed before us that Superintendent of Customs is a gazetted officer. We are therefore not inclined to accept this argument of the petitioner.

24. This now takes us to the next argument of the petitioner that there was no reason for the aforesaid belief of the Custom Officer particularly when no such reason has been recorded anywhere as to what was the information and from whom such information was received on the basis of which the aforesaid officer entertained such belief and therefore it should be presumed that there did not exist any reason and the search, seizure and confiscation on that basis should be declared to have become vitiated. This argument ignores that the

search eventually yielded positive results for the customs department and that gold biscuits having foreign marking, foreign currency inasmuch as Indian currency with other suspected items were recovered from the premises of the petitioner for which no valid explanation was offered by him. We would nonetheless examine the strength of this argument. Although it is correct that according to Section 105 of the Act, the Assistant Collector or the officer empowered by the Board cannot make a search or authorise any officer to make a search unless he has reason to believe the existence of the fact mentioned in that section but that section in terms does not require that he should record reason, inasmuch as, power conferred on him is not subject to any such condition. This should not however detain us any longer because what belief the custom officials had was ultimately substantiated from the fact that the petitioner could not offer any valid explanation for acquisition of eight gold biscuits,

1067 US Dollars, 15 Singapore Dollars and Indian Currency worth Rs.11,10,000/- which were seized from his premises. And therefore even if it is assumed that there was some substance in this argument, yet the proceedings of confiscation on that count alone is not vitiated.

25. An argument similar to the one made in regard to interpretation of Section 105 of the Act has also been advanced before us about the interpretation of the expression “reason to believe” used in Section 123 of the Act. While learned counsel for the petitioner argued that the custom official was required to substantiate his reason to believe as to how he held the belief that the goods were smuggled goods, learned counsel for the respondents however argued that no different parameters can be applied for interpretation of Section 123 then those which are applicable to Section 105 of the Act. But in our view,

reasonableness of belief has to be judged in the light of the facts and circumstances of each case. When the goods are seized under Section 110(1) of the Act for inability of the charged person to satisfactorily explain its origin, leading to seizure of the goods under the Act. Seizure of the goods therefore by itself would be sufficient to comply with the requisite condition under Section 123 of the Act.

26. It is settled proposition of law that if the custom officer taking into consideration various compelling circumstances has reasonable belief that the seized goods are smuggled goods and the person from whom these contraband are seized has not satisfactorily explained the possession of the same as required by Section 123 of the Act that they are not smuggled goods and if prima-facie there are grounds for justifying the belief, the courts have to accept the belief of the officer and

cannot substitute the conclusions of the fact finding authority just because they have a different perspective of the matter.

27. We may at this juncture refer to the judgment of the Hon'ble Supreme Court in **State of Maharashtra Vs. Natwarlal Damodardas Soni : 1983 E.L.T.(13) 1620 (S.C.)** which was heavily relied upon by the learned counsel for the respondents. Their lordships while considering the case of seizure in the Customs Act, 1962 categorically held that even if the search was eventually found to be illegal, then also, it will not affect validity of the seizure and further investigation by the customs authorities. Besides this, their lordships also held that in cases where Section 123(1) of the Customs Act is not attracted, the prosecution can discharge its burden by establishing circumstances from which a prudent man, acting prudently, may infer that in all probability the good in question

were smuggled goods. We may in this connection refer to para 10 and 18 of the report, which for the facility of reference is reproduced hereunder:-

> “10. Taking the first contention first, it may be observed that the police had powers under the Code of Criminal Procedure to search and seize this gold if they had reason to believe that a cognizable offence had been committed in respect thereof. Assuming arguendo, that the search was illegal, then also, it will not affect the validity of the seizure and further investigation by the Customs Authorities or the validity of the trial which followed on the complaint of the Assistant Collector of Customs.”
>
> “18. It is trite law that even in cases where Section 123(1) of the Customs Act is not attracted, the prosecution can discharge its burden by establishing circumstances from which a prudent man, acting prudently, may infer that in all probability the goods in question were smuggled goods.....”.

28. We have been taken through the order-in-original as also the order passed by the Tribunal. In both, the explanation offered by the petitioner in respect of each of the confiscated articles was

examined in detail and was not found acceptable. We have found that both the authorities have rightly analysed the question of burden of proof in the present case because when the notified goods were seized, burden lay only on the petitioner to explain that they were not the smuggled goods. The petitioner failed to discharge that burden by not being able to substantiate the explanation offered by him. The Commissioner as well as Tribunal have recorded their findings on appreciation of all the materials and evidence on record and then arrived at the finding for confiscation of eight gold biscuits, 1067 US Dollars, 15 Singapore Dollars and Indian Currency worth Rs.11,10,000/-. Apart from the statement of the petitioner, similar statement of petitioner's servant Laxman Das recorded u/S.108 of the Act on 20/12/1993, statement of Shankar Das Vadhvani was recorded on 23/4/1993 and Ashok Suri recorded on 7/5/1994, apart from produced documents, were also considered by the Commissioner. Though

these witnesses also later retracted from their statement on different dates but the Commissioner has examined the matter in totality of the circumstances and then recorded his findings.

29. Applying the test laid down by the Hon'ble Supreme Court in State of Maharashtra Vs. Natwarlal Damodardas Soni, supra, it can be said that the respondents have in the present case discharged their burden by establishing circumstances from which a prudent man, acting prudently, may infer that in all probability the seized articles and the currency notes were smuggled goods and their sale proceeds. These findings though recorded on the touch stone of the relevant provisions of law contained in the Act, are essentially findings of fact. Scope of interference by this Court in exercise of its writ jurisdiction of certiorari in such matters is very limited and that is made only when the impugned-order passed by the subordinate

tribunal suffers from any error apparent on the face of record. In the present case, we find none.

30. In view of what has been discussed above, we do not find that the impugned-order-in-original passed by the Commissioner dated 27/30.10.1995 and subsequent order dated 26/12/1997 passed by the Tribunal suffer from any legal infirmity so as to justify our interference. There being no merit in this writ petition, the same is dismissed though with no order as to costs.

Anil **MOHAMMAD RAFIQ, J.** **R.M. LODHA, J.**

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH JAIPUR.

D.B. CIVIL WRIT PETITION NO.3762/1998.

Ramesh Khatnani
Vs.
Union of India and ors.

Date of Order:- July 9th , 2007.

HON'BLE MR.JUSTICE R.M. LODHA
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

****

Whether this judgment / order is to be reported in Law Journal/s : Yes/No